IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12069 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PRASANT ALIAS PANKAJ AMRUTLAL VAGHELA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 12069 of 2003

MR AR SHAIKH for Petitioner No. 1

MS MITA PANCHAL Ld. AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 03/10/2003

ORAL JUDGEMENT

By way of this special civil application, the petitioner has challenged the order of detention passed against him by the Police Commissioner, Ahmedabad city on

28.4.2003 under the exercise of powers under sec. 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "the PASA Act" for short).

The grounds placed on record and served upon the petitioner reveal that the detaining authority took into consideration the material on two aspects, firstly, registration of crime against the petitioner on 2.8.2002 under sec. 66(1)(B), 65E and 81 of the Bombay Prohibition Act whereby the country liquor to the extent of 770 litres came to be seized from the petitioner. The petitioner came to be arrested on 27.4.2003 in the said offence. Secondly, the detaining authority also relied upon the in-camera statements of the witnesses recorded by the proposing authority on 27.4.2003 and verified by the detaining authority on 28.4.2003 revealing the incidents of 25.3.2003 and 5.4.2003. From the above material, the order came to be passed which is impugned in this petition.

Ld. advocate Ms Banna Datta for the petitioner and ld. AGP Ms. Mita Panchal for the respondents were heard at length. Affidavit in reply is filed by the detaining authority as placed on record by Ld.AGP is also taken into consideration.

Out of various contentions raised on behalf of the petitioner and controverted by ld. AGP, it appears that this matter can be disposed of on the ground of delay in passing the order. It is on record that the detaining authority has taken into consideration the offence registered against the petitioner on 2.8.2002. Thereafter, it appears that two incidents which are not reported to the police were referred to by the detaining authority occured on 25.3.2003 and 5.4.2003, however, the proposing authority could refer the statements of the witnesses on 27.4.2003. So, in cronology, the illegal activity revealed before the detaining authority on 2.8.2002, 25.3.2003 and 5.4.2003. One must not to be blind to the fact that, however, the statements of the witnesses in-camera could be recorded on 27.4.2003, therefore, there is delay in passing theorder. True, it is that in the crime registered against the petitioner, he could be arrested only on 27.4.2003, but that itself is not sufficient explanation for passing the order with delay. Therefore, the present case is squarely covered by a decision of Apex court in the matter of Elesh Nadubhai Patel vs. Commissioner of Police Ahmedabad city, as reported in 1997(1) GLH p. 381 and a decision in the

matter of Pradeep N. Paturkar vs. S. Rammurthi as reported in AIR 1994, SC 656. Therefore, the order passed and impugned in this petition is required to be quashed on this ground alone.

In the result, this special civil application is allowed. The order impugned in this special civil application passed on 28.4.2003 by the Police Commissioner, Ahmedabad city, under the PASA Act against the petitioner is quashed and set aside. The petitioner is directed to be set at liberty forthwith, if he is not required to be detained in jail for any other purpose. Rule made absolute with no order as to costs.

(J.R. VORA, J.)

mandora/